

JOAN S. MAGUIRE

IBLA 81-321

Decided October 26, 1981

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application NM-A 42846.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: First-Qualified Applicant

An oil and gas lease application, form 3112-1 (June 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments violative of 43 CFR 3112.4-3 and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

APPEARANCES: Joan S. Maguire, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Joan S. Maguire appeals from the decision of the New Mexico State Office, Bureau of Land Management (BLM), dated January 5, 1981, rejecting her simultaneous oil and gas lease application filed September 3, 1980. Her application was drawn with first priority in the October 1980 drawing for parcel NM-839 and given serial number NM-A 42846. BLM rejected the application because it had not been completely executed as required by 43 CFR 3112.2-1. 1/

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1/ This reference is to the revised regulation promulgated at 43 FR 35164 (May 23, 1980) which became effective June 16, 1980.

Appellant, in her statement of reasons for appeal, offered the following explanation regarding her failure to properly execute the application (form 3112-1):

On 2 August 1980, I received injuries in an accident that resulted in hospitalization, major surgery, and subsequent bedrest for a period of six (6) weeks. On 16 October 1980, I was readmitted to the hospital for follow-up surgery.

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It was during this time period that the 3 September 1980 application for Parcel no. NM-839 was filed. The date also coincides with the approximate time during which the format of the application was changed. I filled out the form as if it were the usual card and inadvertently omitted checking the appropriate boxes.

Appellant's application was executed, signed, and dated, apparently in her own hand. However, an examination of the application reveals that questions (d) through (f) on the reverse side of the card were not answered. BLM's decision states in part:

Pursuant to the regulations Title 43 CFR 3112.2-1(a): "an application to lease under this subpart consists of a simultaneous oil and gas lease application on a form approved by the Director, Bureau of Land Management, completed, signed and filed pursuant to the regulations in this subpart.

Joan S. Maguire did not comply with the regulations in that she failed to check the appropriate boxes under items (d) through (g), 2/ making the application incomplete."

[1] The applicable regulation, 43 CFR 3112.2 and 3112.2-1 state in part:

§ 3112.2 How to file an application.

§ 3112.2-1 Simultaneous oil and gas lease applications.

2/ The application form only requires that items (d) through (f) be checked. Item (g) requires the applicant's attestation by signature of the following statement:

"(g) I have read and I understand the criminal warning below, and I have responded to the above questions and statements truthfully and completely, to the best of my knowledge."

(a) An application to lease under this subpart consists of a simultaneous oil and gas lease application on a form approved by the Director, Bureau of Land Management, completed, signed and filed pursuant to the regulations in this subpart. [Emphasis added.]

Questions (d) through (f) are included in a list of questions on the application dealing with the applicant's qualifications to hold a lease and deal particularly with the circumstances of the execution of the application. The questions relate directly to the qualifications of the applicant to receive a lease. The failure to disclose a party in interest to the lease offer (question (d)) is a violation of the regulation at 43 CFR 3102.2-7, the assignment of an interest in the lease offer (question (e)) prior to lease issuance or lapse of 60 days after determination of priority is a violation of 43 CFR 3112.4-3, and any interest of the applicant in more than one application for the same parcel (question (f)) disqualifies the applicant under 43 CFR 3112.6-1(c). Although the Secretary of the Interior has discretion whether to issue an oil and gas lease for a given tract of land, where he has determined to issue an oil and gas lease for lands not within a known geological structure of a producing oil or gas field, he is required by statute, 30 U.S.C. § 226 (1976), to issue the lease to the first-qualified applicant therefor. Udall v. Tallman, 380 U.S. 1, 4 (1965). The Secretary is entitled to require such information as is necessary to ensure that an applicant for a lease is qualified. See Ken Wiley, 54 IBLA 367 (1981). The questions on the application form serve that purpose. The failure of the applicant to check an answer to each question creates a serious defect in the certification required by the application. This Board has consistently required strict compliance concerning the filing of applications in the simultaneous oil and gas leasing program. See, e.g., Rose B. Carrington, 46 IBLA 149 (1980); Margaret H. Wygocki, 45 IBLA 79 (1980); John L. Messinger, 45 IBLA 62 (1980). <sup>3/</sup> An application is not complete where questions (d) through (f) have not been answered and such application is properly rejected as an improper filing under 43 CFR 3112.6-1(a). Clyde K. Kobbeman, 58 IBLA 268 (1981); Simon A. Rife, *supra* at n.3; Edward Marcinko, 56 IBLA 289 (1981); Vincent M. D'Amico, 55 IBLA 116 (1981), appeal docketed, D'Amico v. Watt, No. 81-2050 (D.D.C. Aug. 31, 1981). Appellant's injuries and subsequent hospitalizations, while unfortunate, do not provide an excuse which would permit the Board to act in contravention of the regulations.

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<sup>3/</sup> Although these decisions arose under the former regulation at 43 CFR 3112.2-1(a) (1979), the substantive requirement of the regulation has not been changed. Strict compliance will still be required under the revised regulation and these decisions may be considered precedential. Simon A. Rife, 56 IBLA 378 (1981).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the New Mexico State Office is affirmed.

C. Randall Grant, Jr.  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

Bruce R. Harris  
Administrative Judge

